

**Kwong Yik Bank Bhd v
Ansonia Management Associates Sdn Bhd**

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-461
OF 1998

GOPAL SRI RAM, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA
25 NOVEMBER 1998

Civil Procedure — Appeal — Interlocutory appeal from subordinate court to High Court — Interpretation of O 49 r 6 of the Subordinate Courts Rules 1980 — Whether memorandum of appeal required to be filed by appellant appealing against decision other than one made after trial — Subordinate Courts Rules 1980 O 49 r 6

This appeal concerned the operation of two rules of court which appear to have given rise to much difficulty and which govern appeals from the subordinate courts to the High Court. These rules are O 49 r 6 of the Subordinate Courts Rules 1980 ('the SCR') and O 55 r 2 of the Rules of the High Court 1980. The issue that had arisen in the application of these two rules is whether a memorandum of appeal is required to be filed by the appellant in cases where he appeals against a decision other than one made after trial. This court had to decide whether the judge had rightly adopted the interpretation of O 49 r 6 of the SCR given in *Vong Ban Hin v Laksamana Realty Sdn Bhd* [1996] 4 CLJ 852 that there was no necessity to file a memorandum of appeal in an appeal against a decision other than a decision made after trial.

Held, dismissing the appeal:

The true purpose and objective in O 49 r 6 of the SCR was to provide for a summary and speedy disposal of appeals against decisions of the subordinate courts made in interlocutory proceedings including an application under O 26A of the SCR. The interpretation given to O 49 r 6 of the SCR by counsel for the appellant, which was supported by *Syarikat Kayu Bersatu Sdn Bhd & Ors v UMW (Sarawak) Sdn Bhd* and other High Court decisions following it, would produce unfairness or manifest injustice to an appellant appealing against an interlocutory order made by a subordinate court. The judge rightly decided to follow the judgment in *Vong Ban Hin v Laksamana Realty Sdn Bhd* which reflects the correct interpretation of the rules (see p 369C-E, G-I); *Vong Ban Hin v Laksamana Realty Sdn Bhd* [1996] 4 CLJ 852 followed, *Syarikat Kayu Bersatu Sdn Bhd & Ors v UMW (Sarawak) Sdn Bhd* [1995] 1 CLJ 113 overruled and *Yupaporn Seangarthit v Neil Allan Campbell Webb* [1995] 3 MLJ 705 distinguished.

[Bahasa Malaysia summary]

Rayuan ini berkaitan dengan operasi dua kaedah mahkamah yang nampaknya telah membangkit kesukaran yang amat sangat dan yang

- A mana menguasai rayuan-rayuan daripada mahkamah rendah kepada Mahkamah Tinggi. Kaedah-kaedah ini adalah A 49 k 6 Kaedah-Kaedah Mahkamah Rendah 1980 ('KMR') dan A 55 k 2 dari Kaedah-Kaedah Mahkamah Tinggi 1980. Isu yang telah berbangkit dalam pemakaian kedua-dua kaedah ini adalah sama ada satu memorandum rayuan dihendaki untuk difailkan oleh perayu dalam kes-kes di
- B mana beliau merayu terhadap satu keputusan selain daripada keputusan yang dibuat selepas perbicaraan. Mahkamah ini terpaksa memutuskan sama ada tuan hakim telah menerima-pakai dengan betulnya pentafsiran A 49 k 6 KMR yang diberikan dalam *Vong Ban Hin v Laksamana Realty Sdn Bhd* [1996] 4 CLJ 852 bahawa satu memorandum rayuan tidak patut difailkan di dalam satu rayuan terhadap satu keputusan selain daripada satu keputusan yang dibuat selepas perbicaraan.
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Diputuskan, menolak rayuan:

- D Tujuan dan objektif sebenar A 49 k 6 KMR adalah untuk memperuntukkan penentuan yang ringkas dan cepat rayuan-rayuan terhadap keputusan-keputusan mahkamah rendah yang dibuat dalam prosiding interlocutori termasuk satu permohonan di bawah A 26A KMR. Pentafsiran yang diberikan kepada A 49 k 6 KMR oleh peguam bagi pihak perayu, yang disokong oleh *Syarikat Kayu Bersatu Sdn Bhd & Ors v UMW (Sarawak) Sdn Bhd* dan keputusan-keputusan
- E Mahkamah Tinggi lain yang mengikutnya, akan menghasilkan ketidakadilan yang nyata kepada perayu yang merayu terhadap perintah interlocutori yang dibuat oleh mahkamah rendah. Hakim tersebut dengan sewajarnya memutuskan untuk mengikut penghakiman dalam *Vong Ban Hin v Laksamana Realty Sdn Bhd* yang menunjukkan pentafsiran sebenar kaedah-kaedah tersebut (lihat ms 369C-E, G-I); *Vong Ban Hin v Laksamana Realty Sdn Bhd* [1996] 4 CLJ 852 diikuti, *Syarikat Kayu Bersatu Sdn Bhd & Ors v UMW (Sarawak) Sdn Bhd* [1995] 1 CLJ 113 ditolak dan *Yupaporn Seangarthit v Neil Allan Campbell Webb* [1995] 3 MLJ 705 dibeza.]
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G Notes

For a case on interlocutory appeal from subordinate court to High Court, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) para 649.

H Cases referred to

Hong Kong Bank Malaysia Bhd v Sereedevi (t/a as SD Rest House) [1997] 3 MLJ 605 (refd)

PH Hendry v George John de Cruz [1949] 2 MLJ 62 (refd)

Sim Seoh Beng & Anor v Koperasi Tunas Muda Sungai Ara Bhd [1995] 1 MLJ 292 (refd)

- I *Syarikat Kayu Bersatu Sdn Bhd & Ors v UMW (Sarawak) Sdn Bhd* [1995] 1 CLJ 113 (overd)
Vong Ban Hin v Laksamana Realty Sdn Bhd [1996] 4 CLJ 852 (folld)
Yupaporn Seangarthit v Neil Allan Campbell Webb [1995] 3 MLJ 705

(distsd)

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Legislation referred to

Rules of the High Court 1980 O 55 r 2

Subordinate Courts Rules 1980 O 26A, O 49 r 6

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Appeal from: Civil Appeal No R3-12-302 of 1996 (High Court, Kuala Lumpur)

Dennis Appaduray (Wong Rhen Yen with him) (Sidek Teoh Wong & Dennis) for the appellant.

B Thangaraj (Thangaraj & Associates) for the respondent.

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Gopal Sri Ram JCA (delivering oral judgment of the court): This appeal raises a short but important point of practice and procedure. It has to do with the operation of two rules of court which appear to have given rise to much difficulty and which govern appeals from the subordinate courts to the High Court. The rules in question are O 49 r 6 of the Subordinate Courts Rules 1980 ('the SCR') and O 55 r 2 of the Rules of the High Court 1980 ('the RHC'). They read as follows.

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First, O 49 r 6 of the SCR states:

- (1) Notwithstanding anything contained in this Order, an appeal shall lie to a Judge in Chambers from any decision made by the Court other than a decision made after trial.
- (2) The appeal shall be brought by filing a notice of appeal in Form 140 within 14 days from the day on which the decision was pronounced, and serving a copy of the notice on every other party to the proceedings within the time limited for the filing of appeal to the Registrar of the High Court.
- (3) Within three weeks after the filing of the notice of appeal, the appellant shall file the record of appeal in the High Court and the record shall contain copies of:
 - (a) the application for the decision;
 - (b) the statement of claim, and where defence has been filed, the statement of defence;
 - (c) all affidavits filed in support of or in opposition to the application; and
 - (d) the decision appealed from,but shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

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Next, O 55 r 2 of the RHC provides as follows:

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- (1) The appellant shall, within fourteen days from the date of service on him of the notice in Form 141 under Order 49, rule 2 sub-rule (4) or rule 3 sub-rule (2) of the Subordinate Courts Rules 1980 (as the case may be), file in the High Court in duplicate a memorandum of appeal in Form 113A.
- (2) The appellant shall within the like period serve each respondent with a copy such memorandum and a copy of the appeal record.

I

The point of difficulty that has arisen in the application of these two rules is

- A whether a memorandum of appeal is required to be filed by the appellant in cases where he appeals against a decision other than one made after trial.

Our attention has been drawn to a number of reported judgments where conflicting views have been expressed by judges of great learning. The views include those of the leave bench of this court in *Yupaporn Seangarthit v Neil Allan Campbell Webb* [1995] 3 MLJ 705. In that case, B Mahadev Shankar JCA described the function of O 49 r 6 of the SCR in the following terms:

- C Its objective was to reduce the delay caused in the registration of appeals by the non-availability of the grounds of decision and notes of evidence which can take a long time in the lower courts. So for orders obtained before trial parties were allowed to compile the record by merely including the pleadings, affidavits, and the decision appealed from together with the written application therefor. Once the appeal was registered, the grounds of judgment and notes of evidence could come later.

- D With respect, we are unable to agree with these views. Suffice for us to say that, in our judgment, the true purpose and objective in O 49 r 6 of the SCR was to provide for a summary and speedy disposal of appeals against decisions of the subordinate courts made in interlocutory proceedings including an application under O 26A of the SCR.

- E If these rules are read in the way in which they were by Richard Malanjum J in *Syarikat Kayu Bersatu Sdn Bhd & Ors v UMW (Sarawak) Sdn Bhd* [1995] 1 CLJ 113 and by his learned brethren who followed his line of reasoning, the result would be to frustrate the very purpose for which O 49 r 6 of the SCR was enacted in 1993. For the result of these decisions is that the summary disposal of an interlocutory appeal by way of rehearing would in effect be no different from an appeal from a decision after trial. F That is certainly not the purpose behind O 49 r 6.

- G It is a well settled principle of statutory interpretation that the intention of the lawmaker is to be gathered from the words he employs in making the particular written law. In the case of rules of court, which are indeed written law, there is an additional principle. It is this. A rule of court should not be given an interpretation that would result in unfairness or produce a manifest injustice. See *Sim Seoh Beng & Anor v Koperasi Tunas Muda Sungai Ara Bhd* [1995] 1 MLJ 292.

- H Applying this principle to the rules before us, we come to the conclusion that the interpretation afforded them by these cases cited in support of the appeal by Mr Dennis Appaduray of counsel for the appellant will produce unfairness or manifest injustice to an appellant appealing against the interlocutory order made by the subordinate court.

- I That brings us to the present appeal. Here, the learned judge, in our judgment, very properly decided to follow the judgment of Augustine Paul JC (as he then was) in *Vong Ban Hin v Laksamana Realty Sdn Bhd* [1996] 4 CLJ 852 which we think reflects the correct approach to the question of interpreting the rules with which we are concerned in the present appeal. We are, therefore, unable to find fault of the reasoning of the learned judge of the present case and are driven to the conclusion that

he was entirely right at arriving at the decision. It follows that we must, and we do, reverse and overrule the decision in *Syarikat Kayu Bersatu* and the cases which followed it.

We are, of course, conscious of the principle that this court is bound by its own decisions. See *PH Hendry v George John de Cruz* [1949] 2 MLJ 62. But we arrive at the same conclusion at which Augustine Paul JC arrived at in *Vong Ban Hin* and in *Hong Kong Bank Malaysia Bhd v Sereedevi (t/a as SD Rest House)* [1997] 3 MLJ 605, in that the views expressed by Mahadev Shankar JCA in *Yupaporn Seangarthit v Neil Allan Campbell Webb* [1995] 3 MLJ 705 were in the course of considering an application for leave to appeal where, strictly speaking, reasons are unnecessary and are usually not delivered. It is trite law that a refusal of leave is not an affirmation of the judgment appealed against. Further, as pointed out by Mokhtar Sidin JCA during argument before us this morning, those observations were purely obiter dicta and not ratio decidendi since they were not necessary for arriving at a decision in that case.

In the result, we would dismiss this appeal and affirm the order made by the learned judge. We make no order as to costs. The deposit paid into court by the appellant is to be refunded to it.

Appeal dismissed.

Reported by David Lai

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